

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

VICTOR RANDOLPH TURNER, JR.,	§	
(TDCJ-CID #1326957)	§	
	§	
Plaintiff,	§	
	§	
vs.	§	CIVIL ACTION H-11-0703
	§	
RICK THALER, <i>et al.</i> ,	§	
	§	
Defendants.	§	

MEMORANDUM ON DISMISSAL

Victor Randolph Turner, Jr., a Texas Department of Criminal Justice inmate, filed a petition for a writ of habeas corpus in February 2011. Turner alleges civil rights violations resulting from interference with his legal mail. This court concludes that Turner's claims are properly asserted under 42 U.S.C. § 1983 and that they must be dismissed because they are barred by the three-strikes provision of 28 U.S.C. § 1915(g).

Turner alleges that law library supervisor, Robert Quada, interfered with his legal mail. Specifically, Turner alleges that Quada prevented his petition for a writ of certiorari from being delivered to the United States Supreme Court. Turner alleges that Quada destroyed the petition and accompanying evidence and that Quada and other prison officials have denied him adequate indigent supplies to file his legal work. He alleges that several prison officials on the Wynne Unit have retaliated against him and subjected him to harassment.

A prisoner may not bring a civil action *in forma pauperis* (IFP) in federal court if, while incarcerated, three or more of his civil actions or appeals were dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, unless he is in imminent danger of

serious physical injury. 28 U.S.C. § 1915(g). Before filing this action, Turner had at least four suits dismissed as frivolous. *Turner v. Livingston*, 4:09-1112 (S.D. Tex.) (dismissed as frivolous on May 28, 2009); *Turner v. 268th District Court*, 4:09-1576 (S.D. Tex.) (dismissed for failure to state a claim on May 28, 2009); *Turner v. Fort Bend County Jail*, 4:09-1779 (S.D. Tex.) (dismissed for failure to state a claim on July 14, 2009); and *Turner v. Elliott*, 4:09-2996 (S.D. Tex.) (dismissed as frivolous on November 24, 2009). In addition, in Civil Action Number 4:11-0109, Turner sued several prison officials at the Wynne Unit, including Robert Quada. On January 14, 2011, the court dismissed the complaint as barred by the three-strikes provision of 28 U.S.C. § 1915(g). It appears that Turner filed the present case as a petition for a writ of habeas corpus to try to avoid the three-strikes provision. But Turner alleges civil rights violations and his complaint arises under 42 U.S.C. § 1983. He has not alleged, nor does his complaint demonstrate, that he is in imminent danger of serious physical injury. Accordingly, Turner is barred under 28 U.S.C. § 1915(g) from proceeding *in forma pauperis* in this action.

Turner's motion to proceed IFP, (Docket Entry No. 3), is denied. His complaint is dismissed under 28 U.S.C. § 1915(g).¹ All pending motions are denied. Turner is warned that continued frivolous filings may result in the imposition of sanctions.

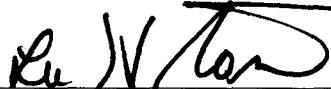
¹ In *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1998), the Fifth Circuit barred an inmate from proceeding further under the statute, except for cases involving an imminent danger of serious physical injury, and dismissing all of Adepegba's IFP appeals pending in that court. The Fifth Circuit noted that the inmate could resume any claims dismissed under section 1915(g), if he decides to pursue them, under the fee provisions of 28 U.S.C. §§ 1911-14 applicable to everyone else.

The TDCJ-CID must continue to deduct twenty percent of each deposit made to plaintiff's inmate trust account and forward payments to the court on a regular basis, provided the account exceeds \$10.00, until the filing fee obligation of \$350.00 is paid in full.

The Clerk will provide a copy of this order by regular mail, facsimile transmission, or e-mail to:

- (1) the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas, 78711, Fax: 512-936-2159;
- (2) the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, Fax: 936-437-4793; and
- (3) the District Clerk for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-Strikes List.

SIGNED on March 25, 2011, at Houston, Texas.



Lee H. Rosenthal
United States District Judge